

**§ 218.15 Applications for Letters of Authorization.**

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 218.10(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.16 or a renewal under § 218.17.

**§ 218.16 Letters of Authorization.**

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.17.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

**§ 218.17 Renewal of Letters of Authorization and adaptive management.**

(a) A Letter of Authorization issued under § 216.106 and § 218.16 of this chapter for the activity identified in § 218.10(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.15 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.14; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.13 and the Letter of Authorization issued under §§ 216.106 and 218.16 of this chap-

ter were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.17 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from JAX Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.14(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.14(d))).

(4) Results from specific stranding investigations (either from the JAX Range Complex Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by

## § 218.18

## 50 CFR Ch. II (10–1–10 Edition)

the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

### § 218.18 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.16 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.17, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.11(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

### Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

SOURCE: 74 FR 28385, June 15, 2009, unless otherwise noted.

### § 218.20 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it oc-

curs within the Cherry Point Range Complex Operation Area (OPAREA), which is located along the southern east coast of the U.S., as stated in the Navy's letter of authorization application. The coordinates of the Cherry Point Range Complex OPAREA are: 35°30' N, 75°25' W; 34°14' N, 73°57' W; 32°12' N, 76°49' W; 32°20' N, 77°20' W; 33°10' N, 77°31' W; and 34°23'30" N, 77°30' W; then along the 3 nm from and parallel to the shoreline.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM-114 (Hellfire missile);

(B) Tube-launched Optically tracked Wire-guided (TOW) missile;

(C) Mine Neutralization (20 lb NEW charges); and

(D) 5" Naval Gunfire.

(ii) Training Exercises:

(A) Mine Neutralization (20 lb NEW charges)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 40 exercises over the course of 5 years (an average of 8 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; TOW)—up to 40 exercises over the course of 5 years (an average of 8 per year); and

(D) FIREX with IMPASS—up to 10 exercises over the course of 5 years (an average of 2 per year).

(2) [Reserved]

(d) Regulations are effective [June 8, 2009] and are applicable to the Navy on June 5, 2009 through June 4, 2014.

### § 218.21 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 218.26, the Holder of the